ORANGE COUNTY
COASTKEEPER.
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September 5, 2019

VIA CERTIFIED MAIL – Return Receipt Requested

SEP 10 2019

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Re: Notice of Violation and Intent to File Suit Under the Clean Water Act

To Whom It May Concern:

I am writing on behalf of Orange County Coastkeeper ("Coastkeeper") regarding violations of the Clean Water Act[1] and California's General Industrial Storm Water Permit[2] ("Storm Water Permit") occurring at: 16371 Construction Circle East, Irvine, CA 92606 (the "Facility"). The purpose of this letter is to put Gary Bale Redi-Mix Concrete, Inc. ("Gary Bale"), as the owner(s) and operator(s) of the Facility, on notice of the violations of the Storm Water Permit occurring at the Facility, including, but not limited to, discharges of polluted storm water from the Facility into local surface waters. Violations of the Storm Water Permit are violations of the Clean Water Act. As explained below, Gary Bale is liable for violations of the Storm Water Permit and the Clean Water Act.

Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), requires that sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), a citizen must give notice of his/her intention to file suit. Notice must be given to the alleged violator, the Administrator of the United States Environmental Protection Agency ("EPA"), the Regional Administrator of the EPA, the Executive Officer of the water pollution control agency in the State in which the violations occur, and, if the alleged violator is a corporation, the registered agent of the corporation. *See* 40 C.F.R. § 135.2(a)(1). This letter is being sent to you as the responsible owner and operator of the Facility or as the registered agent

[1] Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.
[2] National Pollution Discharge Elimination System ("NPDES") General Permit No. CAS000001, Water Quality Order No. 92-12-DWQ, Order No. 97-03-DWQ, as amended by Order No. 2014-0057-DWQ, Order 2015-0012-DWQ & Order 20xx-xxxx-DWQ [return].

for this entity. This notice letter ("Notice Letter") is issued pursuant to 33 U.S.C. §§ 1365(a) and (b) of the Clean Water Act to inform Gary Bale that Coastkeeper intends to file a federal enforcement action against Gary Bale for violations of the Storm Water Permit and the Clean Water Act sixty (60) days or soon thereafter from the date of this Notice Letter.

I. BACKGROUND

A. Orange County Coastkeeper

Orange County Coastkeeper is a non-profit public benefit corporation organized under the laws of the State of California with its office at 3151 Airway Avenue, Suite F-110, Costa Mesa, California 92626. Coastkeeper has over 1,000 members who live and/or recreate in and around the Newport Bay Watershed. Coastkeeper is dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Orange County. To further these goals, Coastkeeper actively seeks federal and state agency implementation of the Clean Water Act, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

Members of Coastkeeper enjoy the waters that the Facility discharges into, including Peters Canyon Channel, San Diego Creek, and Newport Bay. Members of Orange County Coastkeeper use these waterways to swim, boat, kayak, bird watch, view wildlife, hike, bike, fish, wade, standup paddle, walk, and run. Additionally, members of Coastkeeper use the waters to engage in scientific study through pollution and habitat monitoring and restoration activities. The discharge of pollutants from the Facility impairs each of these uses. Further, discharges of polluted storm water from the Facility are ongoing and continuous. Thus, the interests of Coastkeeper's members have been, are being, and will continue to be adversely affected by Gary Bale's failure to comply with the Clean Water Act and the Storm Water Permit.

B. The Owners and/or Operators of the Facility

Information available to Coastkeeper indicates that Gary Bale became the owner and/or operator of the Facility around July 24, 2017. Gary Bale is currently an active California Corporation. The registered agent for service is: Michelle Goerlitz, located at: 16131 Construction Circle West, Irvine, CA 92606. Gary Bale is referred to herein as the "Owner and/or Operator."

The Facility Owner and/or Operator has violated and continues to violate the procedural and substantive terms of the Storm Water Permit including, but not limited to, the illegal discharge of pollutants from the Facility into local surface waters. As explained herein, the Facility Owner and/or Operator is liable for violations of the Storm Water Permit and the Clean Water Act.

C. The Facility's Storm Water Permit Coverage

Certain classified facilities that discharge storm water associated with industrial activity are required to apply for coverage under the Storm Water Permit by submitting a Notice of Intent ("NOI") to the State Water Resources Control Board ("State Board") to obtain Storm Water Permit coverage. *See* 2015 Permit, Finding #12. Upon information and belief, the owner and/or operator obtained Storm Water Permit coverage for the Facility on or about July 24, 2017. The Facility NOI identifies the owner/operator of the Facility as Gary Bale Redi Mix, with an address of 16371 Construction Circle East, Irvine, CA 92606. The NOI lists the Facility site size as 2.3 acres, with all 2.3 acres of industrial area exposed to storm water. The NOI states that the facility is 97% impervious. The Waste Discharger Identification ("WDID") number for the Facility is 8 30I027636.

The NOI lists the Primary Standard Industrial Classification ("SIC") code for the Facility as 3273 (Ready-Mixed Concrete). SIC code 3273 facilities must obtain Storm Water Permit coverage for the entire facility. *See* Storm Water Permit, Attachment A, ¶ 2. Information available to Coastkeeper, including the Facility SWPPP describing vehicle and equipment maintenance and storage at the Facility, indicates that SIC code 4231 (terminal and joint terminal maintenance facilities for motor freight transportation) and/or 4212 (local trucking without storage) also apply to the Facility.

D. Storm Water Pollution and the Waters Receiving Discharges from the Facility

With every significant rainfall event, millions of gallons of polluted storm water originating from industrial operations, such as the Facility, pour into storm drains and local waterways. The consensus among agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering surface waters each year. Such discharges of pollutants from industrial facilities contribute to the impairment of downstream waters and aquatic-dependant wildlife. These contaminated discharges can and must be controlled for the ecosystem to regain its health.

Polluted discharges from concrete mixing facilities, such as the Facility, contain pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; chemical oxygen demand ("COD"); biological oxygen demand ("BOD"); total suspended solids ("TSS"); Nitrate Plus Nitrite ("N+N"); benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; total kjeldahl nitrogen ("TKN"); trash; and oil and grease ("O&G"). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm. Cal. Health & Saf. Code §§ 25249.5-25249.1. Discharges of polluted storm water to Peters Canyon, San Diego Creek, and Newport Bay pose carcinogenic and reproductive toxicity threats to the public and adversely affect the aquatic environment.

The Facility discharges into Peters Canyon Channel, which is a tributary of Reach 1 of San Diego Creek. Reach 1 of San Diego Creek flows into Upper Newport Bay which flows into Lower Newport Bay and ultimately the Pacific Ocean at the Newport Beach. Coastkeeper refers to these surface waters collectively as the "Receiving Waters." The Receiving Waters are ecologically sensitive areas. In particular, Upper Newport Bay is a protected ecological reserve consisting of 752-acres of salt marsh, mudflat, and marine habitats. Although pollution and habitat destruction have drastically diminished once-abundant and varied fisheries, these waters are still an essential habitat for dozens of fish and bird species as well as invertebrate species, including at least two rare and/or threatened aquatic species. Storm water and non-storm water contaminated with sediment, heavy metals, and other pollutants harm the special biological significance of the Receiving Waters.

The California Regional Water Quality Control Board, Santa Ana Region Regional Board ("Regional Board") issued the Basin Plan for the Santa Ana River Basin ("Basin Plan"). The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The intermittent Beneficial Uses for Peters Canyon Channel downstream of the point at which it receives storm water discharges from the Facility include: Groundwater Recharge; Water Contact Recreation, Non-contact Water Recreation, Warm Freshwater Habitat, and Wildlife Habitat. *See* Basin Plan at Table 3-1. The existing and potential Beneficial Uses of Reach 1 of San Diego Creek are: Water Contact Recreation, Non-contact Water Recreation, Warm Freshwater Habitat, and Wildlife Habitat. *See* Basin Plan at Table 3-1. The existing and potential Beneficial Uses of Upper Newport Bay are: Water Contact Recreation, Non-contact Water Recreation, Commercial and Sportfishing, Preservation of Biological Habitats of Special Significance, Rare, Threatened or Endangered Species, Spawning, Reproduction and Development, Marine Habitat, Shellfish Harvesting, and Estuarine Habitat. *See* Basin Plan at Table 3-1. The existing and potential Beneficial Uses of Lower Newport Bay are: Water Contact Recreation, Non-contact Water Recreation, Commercial and Sportfishing, Wildlife Habitat, Rare, Threatened or Endangered Species, Spawning, Reproduction and Development, Marine Habitat, Shellfish Harvesting, and Navigation. *See* Basin Plan at Table 3-1.

According to the 2016 303(d) List of Impaired Water Bodies, Peters Canyon Channel is impaired for Benthic Community Effects, Dichlorodiphenyltrichloroethane ("DDT"), Indicator Bacteria, Malathion, Selenium, Toxaphene, Toxicity, and pH. Reach 1 of the San Diego Creek is impaired for Benthic Community Effects, DDT, Indicator Bacteria, Malathion, Nutrients, Sedimentation/Siltation, Selenium, Toxicity, and Toxaphene. Upper Newport Bay is impaired for Chlordane, Copper, DDT, Indicator Bacteria, Malathion, Nutrients, Polychlorinated biphenyls ("PCBs"), Toxicity, and Sedimentation/Siltation; and Lower Newport Bay is impaired for Chlordane, Copper, DDT, Indicator Bacteria, Nutrients, PCBs, and Toxicity.[3] Polluted discharges from industrial sites, such as the Facility, contribute to the degradation of these already impaired surface waters and aquatic-dependent wildlife that depend on these waters.

[3] 2016 Integrated Report, *available at* https://www.waterboards.ca.gov/water_issues/programs/tmdl/integrated2014_2016.shtml (last accessed on August 27, 2019).

II. THE FACILITY AND ASSOCIATED DISCHARGES OF POLLUTANTS

A. The Facility Site Description and Industrial Activities

The Facility is a concrete mixing facility that produces ready-mixed concrete. Concrete is produced by mixing aggregate (sand, gravel, or crushed stone), cement (a fine powder), fly ash, chemical additives, and water. According to the Facility's Storm Water Pollution Prevention Plan ("SWPPP"), the Facility operates Monday through Friday from 6:00 am to 5:00 pm, and will occasionally operate during evenings, nights, or weekends if there are large public works projects that require construction activities to be conducted at these times.

The areas of industrial activity at the Facility include a batch plant process area with cement and fly ash silos, admixture storage and handling areas, aggregate storage and handling areas with conveyors and stockpiles, process water areas, vehicle traffic and parking areas, and vehicle fueling and truck parking areas.

Information available to Coastkeeper indicates that the industrial activities at the Facility include, but are not limited to: receiving raw materials from off-site; concrete production; concrete truck loading; vehicle and equipment maintenance; storage of hazardous materials, such as diesel fuel, new vehicle fluids, and hazardous waste vehicle fluids; concrete truck parking; unloading of sand and gravel; storage of sand and gravel; storage of cement; storage of chemical additives; storage of fly ash and cement; weighing sand, gravel, cement, and lime; cement mixing; mixing appropriate amounts of sand, gravel, and cement; generation of process water; and generation of vehicle wash-water.

B. Pollutants and Pollutant Sources Related to the Facility Industrial Activities

The areas of industrial activity and industrial activities at the Facility are sources of pollutants. The pollutants associated with industrial activities at the Facility include, but are not limited to: pH-affecting substances; metals, such as iron and aluminum; toxic metals, such as lead, zinc, cadmium, chromium, copper, arsenic, and mercury; COD; BOD; TSS; N+N; benzene; gasoline and diesel fuels; fuel additives; coolants; antifreeze; TKN; trash; and O&G.

Information available to Coastkeeper also indicates that concrete, particulates of sand, gravel, and cement have been and continue to be tracked from vehicle maintenance and equipment washing areas throughout the Facility. These pollutants accumulate at the sand and gravel storage areas and near the silos, the loading and unloading areas, and the driveways leading onto Construction Circle. As a result, trucks and vehicles leaving the Facility via the driveways are pollutant sources tracking sediment, dirt, oil and gas, metal particles, and other pollutants off-site.

Information available to Coastkeeper indicates that raw materials are stored outside and weighing and mixing activities occur outside without adequate cover or containment, resulting in discharges of polluted storm water. Additionally, metal parts and hazardous materials associated

with maintenance, fueling, and washing of the concrete trucks occur outside without secondary containment or other measures to prevent polluted storm water and prohibited non-storm water discharges from discharging from the Facility. These activities are all significant pollutant sources at the Facility.

Information available to Coastkeeper indicates the Facility Owner and/or Operator has not properly developed and/or implemented the required best management practices ("BMPs") to address the pollutant sources and associated pollutants at the Facility. BMPs are necessary at the Facility to prevent the exposure of pollutants to precipitation and the subsequent discharge of polluted storm water from the Facility during rain events. As a result of the Facility Owner and/or Operator's failure to develop and/or implement adequate BMPs, during rain events, storm water carries pollutants from the Facility's stockpile or material storage area(s), truck parking area(s), maintenance area(s), add-mix area(s), batch plant area(s), washing area(s), and other areas into the storm sewer system, which flows into the Receiving Waters, in violation of the Storm Water Permit and the Clean Water Act. The Facility Owner and/or Operator's failure to develop and/or implement required BMPs also results in prohibited discharges of non-storm water in violation of the Storm Water Permit and the Clean Water Act. Information available to Coastkeeper indicates that process waters discharge from Facility equipment washing and other industrial activity areas.

These illegal discharges of polluted storm and non-storm water negatively impact Coastkeeper's members' use and enjoyment of the Receiving Waters by degrading the quality of the Receiving Waters and by posing risks to human health and aquatic life.

C. The Facility's Storm Water Flow and Discharge Locations

In the Facility's SWPPP, the Facility Owner and/or Operator reports that the Facility consists of one discharge point ("Outfall 1") via the facility's driveway into Construction Circle West. The storm water that falls on the site is reportedly directed to a detention basin or towards the facility entrance where it is contained and pumped back into the detention basin. SWPPP, Sec. 4.1. If the detention basin reaches its capacity, storm water will discharge at Outfall 1. *Id.* The retention capacity of the detention basin is not provided. The SWPPP's Storm Water Containment and Discharge Reduction BMPs indicate that if the basin becomes full, water from the basin can be pumped to mixer trucks for storage. SWPPP, Sec. 8.2.2.

The SWPPP states that storm water discharges from Outfall 1 onto Construction Circle West only, and that is where samples are collected. SWPPP, Sec. 10.4.1. Discharges from the Facility flow into the City of Irvine storm drains. After the storm water enters the storm drains it is carried to the Receiving Waters.

III. VIOLATIONS OF THE CLEAN WATER ACT AND THE STORM WATER PERMITS

In California, any person who discharges storm water associated with industrial activity must comply with the terms of the Storm Water Permit in order to lawfully discharge pollutants. *See* 33 U.S.C. §§ 1311(a), 1342; 40 C.F.R. § 122.26(c)(1); *see also* Storm Water Permit, Fact Sheet at VII.

Between 1997 and June 30, 2015, the Storm Water Permit in effect was Order No. 97-03-DWQ, which Coastkeeper refers to as the "1997 Permit." On July 1, 2015, pursuant to Order No. 2014-0057-DWQ the Storm Water Permit was reissued, and, as explained below, includes terms that are as stringent as or more stringent than the 1997 Permit. For purposes of this Notice Letter, Coastkeeper refers to the reissued permit as the "2015 Permit." Accordingly, the Facility Owner and/or Operator is liable for ongoing violations of the 2015 Permit, and civil penalties and injunctive relief are available remedies.

A. Unauthorized Non-Storm Water Discharges from the Facility in Violation of Storm Water Permit Discharge Prohibitions

Except as authorized by Special Conditions D(1) of the Storm Water Permit, Discharge Prohibition A(1) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. The 2015 Permit includes the same discharge prohibition. *See* 2015 Permit, Discharge Prohibition III.B. Prohibited non-storm water discharges must be either eliminated or permitted by a separate NPDES permit. *See* 2015 Permit, Discharge Prohibition III.B.

Information available to Coastkeeper indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges. For example, unauthorized non-storm water discharges occur at the Facility when truck washing and cleaning activities occur. The Facility Owner and/or Operator conducts these activities without BMPs to prevent related non-storm water discharges. Non-storm water discharges resulting from washing and cleaning are not from sources that are listed among the authorized non-storm water discharges in Special Conditions D(1) of the Storm Water Permit and thus are always prohibited under the Storm Water Permit.

Coastkeeper puts the Facility Owner and/or Operator on notice that the Storm Water Discharge Prohibitions are violated each time non-storm water is discharged from the Facility. *See*, 2015 Permit, Discharge Prohibition III.B. These discharge violations are ongoing and will continue until the Facility Owner and/or Operator develops and implements BMPs that prevent prohibited non-storm water discharges or obtains separate NPDES permit coverage. Each time the Facility Owner and/or Operator discharge prohibited non-storm water in violation of Discharge Prohibition III.B. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the number and dates of violations when additional information becomes available. The

Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 24, 2017.

B. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Effluent Limitations

Effluent Limitation V.A. of the 2015 Permit requires dischargers to reduce or prevent pollutants associated with industrial activity in storm water discharges through implementation of BMPs that achieve Best Available Technology Economically Achievable ("BAT") for toxic[4] and non-conventional pollutants and Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants.[5]

Information available to Coastkeeper, including its review of publicly available information and storm water samples collected by Coastkeeper, BMPs that achieve BAT/BCT have not been implemented at the Facility. For example, storm water discharges from the Facility contain concentrations of pollutants associated with the Facility's industrial activities above benchmark levels established by the EPA. These EPA benchmarks are relevant and objective standards for evaluating whether a permittee's BMPs achieve compliance with BAT/BCT standards as required by Effluent Limitation V.A. of the 2015 Permit.[6] The table in Exhibit 1 sets forth the results of samples collected by Coastkeeper as well as the Facility Owner and/or Operator. The ongoing exceedances of EPA benchmarks for pH, iron, N+N, aluminum, and TSS as shown in Exhibit 1 demonstrate that the Facility Owner and/or Operator has failed and continues to fail to develop and/or implement BMPs at the Facility as required to achieve compliance with the BAT/BCT standards.

Coastkeeper puts the Facility Owner and/or Operator on notice that the Storm Water Permit Effluent Limitations are violated each time storm water discharges from the Facility. *See, e.g.*, Exhibit 2 (setting forth dates of rain events resulting in a discharge at the Facility).[7] These discharge violations are ongoing and will continue every time the owner and/or operator discharges polluted storm water from the Facility without developing and/or implementing BMPs that achieve compliance with the BAT/BCT standards. Coastkeeper will update the dates of violations when additional information and data become available. Each time the owner

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[4] Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, benzene, arsenic, lead, and zinc, among others.

[5] Conventional pollutants are listed at 40 C.F.R. § 401.16 and include biochemical oxygen demand, TSS, oil and grease, pH, and fecal coliform.

[6] *See United States Environmental Protection Agency (EPA) National Pollutant Discharge Elimination System (NPDES) Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) Authorization to Discharge Under the National Pollutant Discharge Elimination System*, as modified effective February 26, 2009 ("Multi-Sector Permit"), Fact Sheet at 106; *see also*, 65 Federal Register 64839 (2000).

[7] Dates of significant rain events are measured at the Santa Ana rain gauge at John Wayne Airport (USW00093184), based on data recorded by NOAA. A significant rain event is defined by EPA as a rainfall event generating 0.1 inches or more of rainfall, which generally results in discharges at a typical industrial facility. There have been a total of 35 significant rain events since July 1, 2017, as measured by the Santa Ana rain gauge.

and/or operator discharges polluted storm water in violation of Effluent Limitation V.A. of the 2015 Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 24, 2017.

C. Discharges of Polluted Storm Water from the Facility in Violation of Storm Water Permit Receiving Water Limitations

The Storm Water Permit and the CWA prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of an applicable WQS.[8] 33 U.S.C. § 1311(b)(l)(C); 40 C.F.R. §§ 122.4(d), 122.4(i), 122.44(d); 2015 Permit, Receiving Water Limitation VI.A. Discharges that contain pollutants in excess of an applicable WQS violate these requirements.

Receiving Water Limitation VI.B. of the 2015 Permit prohibits storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment. Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment constitute violations of the Storm Water Permit Receiving Water Limitations. *See* Receiving Water Limitation VI.B.

Storm water sampling at the Facility demonstrates that discharges contain concentrations of pollutants that cause or contribute to a violation of an applicable WQS. For example, the WQS from the Basin Plan for pH is 6.5-8.5 s.u. On January 14, 2019, storm water discharging from the Facility measured pH levels of 10.2 s.u., which is 1.7 s.u. above the maximum allowable pH level. On January 31, 2019, storm water discharging from the Facility measured pH levels of 9.60 and 9.66 s.u., which are 0.6 and 0.66 s.u. above the maximum allowable pH level. *See* Ex. 1.

As explained herein, the Receiving Waters are impaired, and thus unable to support the designated beneficial uses, for some of the same pollutants discharging from the Facility. The 2016 303(d) List of Impaired Water Bodies lists the Receiving Waters as impaired for multiple pollutants, including pH. Information available to Coastkeeper indicates that the Facility's storm water discharges contain elevated concentrations of pollutants, such as iron and pH, which can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. *See, e.g.,* Exhibit 1. In particular, storm water discharged with high pH can damage the gills and skin of aquatic organisms and cause death at levels above 10 standard units. The pH scale is logarithmic and the solubility of a substance varies as a function of the pH of a solution. A one whole unit change in SU represents a tenfold increase or decrease in ion concentration. If

[8] The Basin Plan designates Beneficial Uses for the Receiving Waters. Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the Criteria for Priority Toxic Pollutants in the State of California, 40 C.F.R. § 131.38 ("CTR"), and water quality objectives in the Basin Plan.

the pH of water is too high or too low, the aquatic organisms living within it will become stressed or die. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the Storm Water Permit Receiving Water Limitations. *See* 2015 Permit, Receiving Water Limitation VI.

Coastkeeper puts the Facility Owner and/or Operator on notice that Storm Water Permit Receiving Water Limitations are violated each time polluted storm water discharges from the Facility. *See, e.g.,* Exhibit 2. These discharge violations are ongoing and will continue every time contaminated storm water is discharged in violation of the Storm Water Permit Receiving Water Limitations. Each time discharges of storm water from the Facility cause or contribute to a violation of an applicable WQS, it is a separate and distinct violation of Receiving Water Limitation VI.A. of the 2015 permit, and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a). Coastkeeper will update the dates of violation when additional information and data becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 24, 2017.

Further, Coastkeeper puts the Facility Owner and/or Operator on notice that 2015 Permit Receiving Water Limitations are independent Permit requirements with which Gary Bale must comply, and that carrying out the iterative process triggered by exceedances of the NALs listed at Table 2 of the 2015 Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a water quality standard.[9] Even if the Facility Owner and/or Operator submits any Exceedance Response Action Plan(s) pursuant to Section XII. of the 2015 Permit, the violations of the Receiving Water Limitations described in this Notice Letter are ongoing.

D. Failure to Develop, Implement, and/or Revise an Adequate Storm Water Pollution Prevention Plan

The Storm Water Permit Requires permittees to develop and implement Storm Water Pollution Prevention Plans prior to conducting, and in order to continue, industrial activities. The specific SWPPP requirements of the 2015 Permit are set out below.

[9] "The NALs are not intended to serve as technology-based or water quality-based numeric effluent limitations. The NALs are not derived directly from either BAT/BCT requirements or receiving water objectives. NAL exceedances defined in [the 2015] Permit are not, in and of themselves, violations of [the 2015] Permit." 2015 Permit, Finding 63, p. 11. The NALs do, however, trigger reporting requirements. *See* 2015 Permit, Section XII.

1. 2015 Permit SWPPP Requirements

Sections X(A) - (H) of the 2015 Permit require dischargers to have developed and implemented an SWPPP that meets all of the requirements of the 2015 Permit. *See also* 2015 Permit, Appendix 1. The objectives of the SWPPP requirements are to identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and to implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges. *See* 2015 Permit, Section X(C).

The SWPPP must include, among other things, a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the storm water conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; a description of the BMPs developed and implemented to reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges necessary to comply with the Storm Water Permit; the identification and elimination of non-storm water discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities, and; the identification of individuals and their current responsibilities for developing and implementing the SWPPP. 2015 Permit, Section X(A)-(H).

Further, the 2015 Permit requires the discharger to evaluate the SWPPP on an annual basis and revise it as necessary to ensure compliance with the Storm Water Permit. 2015 Permit, Section X(A)-(B). The 2015 Permit also requires that the discharger conduct an annual comprehensive site compliance evaluation that includes a review of all visual observation records, inspection reports and sampling and analysis results, a visual inspection of all potential pollutant sources for evidence of, or the potential for, pollutants entering the drainage system, a review and evaluation of all BMPs to determine whether the BMPs are adequate, properly implemented and maintained, or whether additional BMPs are needed, and a visual inspection of equipment needed to implement the SWPPP. 2015 Permit, Section X(B) and Section XV.

2. The Facility Owner and/or Operator Has Violated and Continues to Violate the Storm Water Permit SWPPP Requirements

Information available to Coastkeeper indicates that the Facility Owner and/or Operator has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or improperly revised SWPPP.

For example, Coastkeeper has observed storm water discharges and collected samples from two outfalls at the Facility. The Facility's 2017-2018 Annual Report and 2018-2019 Annual Report further identify two discharge points. Yet, the SWPPP for the Facility and the Site Map identify only a single outfall, despite evidence that there are at least two points of discharge. The Facility Owner and/or Operator have not adequately revised the SWPPP in response to ongoing

high concentrations of pollutants or in response to the discovery of additional outfalls. Similarly, the site map fails to adequately and accurately depict storm water flow direction and identify outfalls. Finally, the SWPPP is not certified by the Legally Responsible Person.

Accordingly, the Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise a SWPPP, in violation of SWPPP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or improperly revised SWPPP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit SWPPP requirements since at least July 24, 2017. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 24, 2017.

E. Failure to Develop, Implement, and/or Revise an Adequate Monitoring and Reporting Program

The Storm Water Permit requires permittees to develop and implement storm water monitoring and reporting programs ("M&RPs") prior to conducting, and in order to continue, industrial activities. The specific M&RP requirements of the 2015 Permit are set out below.

1. 2015 Permit M&RP Requirements

Sections X(I) and XI(A)-XI(D) of the 2015 Permit require facility operators to develop and implement an adequate M&RP that meets all of the requirements of the 2015 Permit. The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the 2015 Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. *See* 2015 Permit, Section XI. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the facility, and is evaluated and revised whenever appropriate to ensure compliance with the Storm Water Permit. *See id.*

Section XI(A) of the 2015 Permit requires visual observations at least once each month, and at the same time sampling occurs at a discharge location. Observations must document the presence of any floating and suspended material, O&G, discolorations, turbidity, odor and the source of any pollutants. 2015 Permit, Section XI(A)(2). Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges. 2015 Permit, Section XI(A)(3).

Under the 2015 Permit discharges must collect at least two (2) samples from QSEs within the first half of each reporting year (July 1 to December 31), and two (2) QSEs from the second half of each reporting year (January 1 to June 30) (2015 Permit § X.B.3), which must be analyzed for TSS, pH, O&G, and additional parameters identified on a facility-specific basis that

serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment – in addition to those required under the SIC code. 2015 Permit § X.G.2. Table 1 of the 2015 Permit requires SIC code 3273 facilities, such as this Facility, to analyze samples for iron. Section XI(B)(6)(c) of the 2015 Permit requires permittees to analyze samples for pollutants associated with industrial operations. Section XI(B)(6) of the 2015 Permit also requires dischargers to analyze storm water samples for additional applicable industrial parameters related to receiving waters with 303(d) listed impairments, or approved Total Maximum Daily Loads. Section XI(B)(11) of the 2015 Permit, among other requirements, provides that permittees must submit all sampling and analytical results for all samples via SMARTS within 30 days of obtaining all results for each sampling event.

2. The Facility Owner and/or Operator Has Violated and Continue to Violate the Storm Water Permit M&RP Requirements

The Facility Owner and/or Operator has been and continues to conduct operations at the Facility with an inadequately developed, implemented, and/or improperly revised M&RP.

For example, the Facility Owner and/or Operator has also failed and continues to fail to collect storm water discharge samples as required. Under Section XI(B)(3) of the 2015 Permit, Compliance Group Participants are required to collect and analyze storm water samples from two Qualifying Storm Events ("QSE") within the first half of each reporting year (July 1st to December 31st) and two QSEs within the second half of each reporting year (January 1st to June 30th). For the 2018-2019 reporting year, the Facility should have collected and reported four storm water samples. Instead, the Facility reported that "no qualifying storm water discharges occurred during Facility operating hours."

Based on Coastkeeper's investigations and storm water sampling, the Facility discharged on January 14, 2019, a Wednesday. The samples were collected by Coastkeeper's storm water monitoring team at approximately 1:20 p.m. from the west driveway and another sample was collected around 1:50 p.m. from the east driveway. According to Coastkeeper's monitoring team, employees were present on-site and the Facility was operating, which is consistent with the hours reflected in the Facility SWPPP. On January 31, 2019, a Thursday, Coastkeeper staff again collected a storm water sample from the west driveway at approximately 1:35 p.m. Again, Coastkeeper staff observed Gary Bale employees working, which is consistent with the Facility hours in the SWPPP. Nonetheless, the owner and/or operator failed to collect and report any storm water samples in the 2018-2019 reporting year. Based on climatological data obtained from NOAA, there were additional opportunities to sample significant rain events on November 29, 2018, a Thursday, and December 6, 2018, a Thursday. *See* Exhibit 2. Similarly, there were several precipitation events in March 2018 where the Facility could have sampled and reported for the 2017-2018 reporting year. *See* Exhibit 2.

In addition, because of the Facility Owner and/or Operator's failure to submit any sampling and analytical results for any samples via SMARTS, the Facility is also in violation of

Section XI(B)(11)(a). Accordingly, the Facility Owner and/or Operator has failed and continues to fail to adequately develop, implement, and/or revise an M&RP, in violation of M&RP requirements of the Storm Water Permit. Every day the Facility operates with an inadequately developed, implemented, and/or improperly revised M&RP is a separate and distinct violation of the Storm Water Permit and the Clean Water Act. The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit M&RP requirements since at least July 24, 2017. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 24, 2017.

F. Failure to Comply with the Storm Water Permit's Reporting Requirements

Section XVI of the 2015 Permit requires a permittee to submit an Annual Report to the Regional Board by July 15 of each year. The Annual Report includes a checklist that indicates whether the discharger has complied with all of the requirements of the Permit, an explanation for non-compliance, an identification of all SWPPP revisions, and the date of the Annual Evaluation. *See* 2015 Permit, Section XVI. Annual Reports are certified by the Legally Responsible Person under penalty of perjury.

The Facility Owner and/or Operator has failed and continues to fail to submit Annual Reports that comply with these reporting requirements. For example, in its 2017-2018 Annual Report, the Facility Owner and/or Operator certified that the samples were not collected and analyzed because there were no discharges. On the contrary, there were multiple storm events large enough to generate a discharge of storm water during facility operating hours. *See* Exhibit 2. In addition, the 2018-2019 Annual Report similarly certified that the samples were not collected and analyzed because there were no discharges. As described above, there were multiple discharges of storm water from the Facility during operating hours. Therefore, the 2017-2018 Annual Report and the 2018-2019 Annual Report erroneously certify compliance with the Permit's monitoring requirements.

Given that the Facility Owner and/or Operator has submitted an incomplete and/or incorrect Annual Report that fails to comply with the Storm Water Permit, the Facility Owner and/or Operator is in daily violation of the Storm Water Permit. Every day the Facility Owner and/or Operator conducts operations at the Facility without reporting as required by the Storm Water Permit is a separate and distinct violation of the Storm Water Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. §1311(a). The Facility Owner and/or Operator has been in daily and continuous violation of the Storm Water Permit's reporting requirements every day since at least July 24, 2017. These violations are ongoing, and Coastkeeper will include additional violations when information becomes available. The Facility Owner and/or Operator is subject to civil penalties for all violations of the Clean Water Act occurring since July 24, 2017.

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4 (1997), each separate violation of the Clean Water Act subjects the violator to a penalty of up to $37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009 and $53,484 per day per violation for violations that occurred after November 2, 2015 and assessed on or after January 15, 2018.

In addition to civil penalties, Coastkeeper will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), Coastkeeper will seek to recover its costs, including attorneys' and experts' fees, associated with this enforcement action.

V. CONCLUSION

Coastkeeper is willing to discuss effective remedies for the violations described in this Notice Letter. If the Notice Recipients with to pursue such discussions, we suggest that you initiate those discussions immediately. Upon expiration of the 60-day notice period, Coastkeeper intends to file a citizen suit under Section 505(a) of the Clean Water Act to prevent ongoing violations of the Clean Water Act at the Facility.

If you wish to pursue settlement discussions, please contact Coastkeeper's legal counsel:

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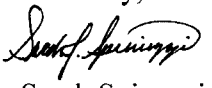
Sincerely,



Sarah Spinuzzi
Colin Kelly
Counsel for Orange County Coastkeeper

SERVICE LIST

VIA U.S. CERTIFIED MAIL – Return Receipt Requested

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Eileen Sobeck
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EXHIBIT 1

Sample collected by Coastkeeper	Date of sample collection	Sample Location	Parameter	Result	Units	Benchmark/NAL	Magnitude of Benchmark Exceedance	California Toxics Rule Criteria/WQO	Magnitude of CTR/WQO Exceedance
2018 - 2019 Reporting Year									
C	01.14.2019	West Driveway	Aluminum	0.79	mg/L	0.75	**1.053333333**	none	N/A
C	01.14.2019	West Driveway	pH	10.1	s.u.	6.0-9.0	**above by 1.1**	6.5-8.5	**above by 1.6 s.u.**
C	01.14.2019	East Driveway	N+N	0.82	mg/L	0.68	**1.205882353**	none	N/A
C	01.14.2019	East Driveway	Iron	4.9	mg/L	1	**4.9**	none	N/A
C	01.14.2019	East Driveway	Aluminum	3.7	mg/L	0.75	**4.933333333**	none	N/A
C	01.14.2019	East Driveway	Total Suspended Solids	150	umohs/cm	100	**1.5**	none	N/A
C	01.14.2019	East Driveway	pH	8.66	s.u.	6.0-9.0	N/A	6.5-8.5	**above by .1 s.u.**
C	01.31.2019	West Driveway	N+N	0.92	mg/L	0.68	**1.352941176**	none	N/A
C	01.31.2019	West Driveway	Iron	6.7	mg/L	1	**6.7**	none	N/A
C	01.31.2019	West Driveway	Aluminum	5	mg/L	0.75	**6.666666667**	none	N/A
C	01.31.2019	West Driveway	Total Suspended Solids	270	umohs/cm	100	**2.7**	none	N/A
C	01.31.2019	West Driveway	pH	9.66	s.u.	6.0-9.0	**above by .66 s.u.**	6.5-8.5	**above by 1.16 s.u.**
						TOTAL	**11**		**3**

EXHIBIT 2

Santa Ana Rainfall

Date	Day of the Week	Rain Inches
1/8/2018	Monday	0.2
1/9/2018	Tuesday	0.9
2/26/2018	Monday	0.16
2/27/2018	Tuesday	0.16
3/10/2018	Saturday	0.45
3/15/2018	Thursday	0.19
3/22/2018	Thursday	0.19
10/3/2018	Wednesday	0.11
10/12/2018	Friday	0.52
10/13/2018	Saturday	0.21
12/5/2018	Wednesday	0.25
12/6/2018	Thursday	3.24
1/5/2019	Saturday	0.5
1/12/2019	Saturday	1.17
1/14/2019	Monday	0.62
1/15/2019	Tuesday	0.95
1/16/2019	Wednesday	0.53
1/17/2019	Thursday	0.52
1/31/2019	Thursday	0.7
2/2/2019	Saturday	1.55
2/3/2019	Sunday	0.11
2/4/2019	Monday	0.63
2/5/2019	Tuesday	0.14
2/9/2019	Saturday	0.23
2/10/2019	Sunday	0.17
2/13/2019	Wednesday	0.27
2/14/2019	Thursday	2.11
2/15/2019	Friday	0.12
3/2/2019	Saturday	0.23
3/3/2019	Sunday	0.48
3/6/2019	Wednesday	0.44
3/21/2019	Thursday	0.11
5/16/2019	Thursday	0.21
5/19/2019	Sunday	0.11
5/22/2019	Wednesday	0.17
	Total Rain Days	35